



MIT-024-USA-P

REMARKS

The Examiner is thanked for noting in the Office Action mailed January 12, 2006 the withdrawal of the objection to the Abstract. Pursuant to that Office Action, Claim 8 has been amended to require that there is a gap formed between every adjacent two connecting protrusions. Support for this limitation can be found in the drawings, Figs. 2 and 7-9. The present amendment is deemed not to introduce new matter. Claims 1-3 and 5-8 remain in the application, Claims 4 and 9-13 having previously been cancelled.

Reconsideration is respectfully requested of the rejection of Claims 1-3 and 5-8 under 35 U.S.C. 102(b) as anticipated by Shirai US 5,377,369 (hereinafter Shirai '369).

In the rejection, the Examiner relies upon the case of *Hupp v. Siroflex of America, Inc.*, 43 USPQ 2d 1887 (Fed.Cir. 1997) for the proposition that the shape and appearance of the present invention is identical in all material respects to Shirai '369. Applicant respectfully traverses the Examiner's conclusion, and strongly urges that the Examiner's reliance upon the Hupp case is misplaced for a number of reasons which will be discussed below.

In support of the rejection based on Shirai '369, the Examiner on pages 3-6 of the Office Action purports to compare the elements called for in the claims of the present application with drawings which the Examiner contends are disclosed in Shirai '369. However, it is respectfully submitted that the drawings on pages 5 and 6 of the Office Action do not correspond to the drawings in the Shirai '369 patent. Further, there is no disclosure (either a verbal description or drawings) in the Shirai '369 patent of the structures depicted in the Office Action.

Moreover, the Examiner's comparison between the elements of the claims and the drawings is fatally flawed because there is simply no correspondence between the structure called for in the claims of the present application and Shirai '369. For example, there is no disclosure whatever in

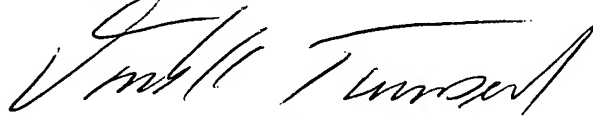
Shirai '369 of the particular protrusions and recesses called for in the claims of the present application and depicted in Figs. 5-9 herein.

In summary, there is nothing in Shirai '369 which would teach or suggest the structure or shape of a bendable bottom member for a bed as called for in the claims herein. Further, the Examiner's rejection fails because it is based on drawings nowhere found in Shirai '369 and on a flawed analysis which fails to compare the claimed structure with a corresponding structure disclosed in Shirai '369. The phantom structures purportedly originating in Shirai '369 are insufficient to constitute a basis for rejection under 35 U.S.C. 102(b); consequently, the Examiner would be justified in no longer maintaining the rejection. Withdrawal of the rejection is accordingly respectfully requested.

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance and early action and allowance thereof is accordingly respectfully requested. In the event that there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems.

Respectfully submitted,

TOWNSEND & BANTA

A handwritten signature in black ink, appearing to read "Donald E. Townsend", is written over the printed name.

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Date: July 12, 2006



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CERTIFICATE OF MAILING

I hereby certify that this Amendment and Transmittal in Docket No. MIT-024-USA-P, Serial No. 10/765,958, filed January 29, 2004, was deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

On July 12, 2006.

Donald E. Townsend